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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER J. MALNEKOFF

Appeal 2009-010063
Application 09/871,867
Technology Center 3600

Decided: February 17, 2010

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-18 and 20-22. Claim 19 is cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a system and method of automated gemstone evaluation for producing an automated gemstone evaluation report. (Specification 1:9-11).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A fully automated gemstone evaluation system for which presence of the actual gemstone is not required, comprising:

an input device adapted to receive a gemstone laboratory grading certificate via a remote communication device the gemstone laboratory grading certificate including cut type, weight, color, clarity, and cut proportions wherein the data for cut proportions include an objective measurable value for at least one of depth percentage, table percentage, girdle thickness, crown height, crown angle, pavilion depth, pavilion angle, culet amount, and type of finish;

a processing device adapted to compute a pricing estimate for use in an evaluation report, based at least upon the data included on the gemstone laboratory grading certificate; and

an output device adapted to communicate the evaluation report to the system user.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Aggarwal	US 6,239,867 B1	May 29, 2001
Vanier	US 5,828,405	Oct. 27, 1998

A Multimedia Solution to Productivity Gridlock: A Re-Engineered Jewelry Appraisal System at Zale Corporation, MIS Quarterly (March 1994) (hereinafter "Zale").

The following rejections are before us for review.

The Examiner rejected claims 15-18 and 20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

The Examiner rejected claims 1-18 and 20-22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

The Examiner rejected claims 1-14 under 35 U.S.C. § 102(e) as being anticipated by Aggarwal.

The Examiner rejected claims 3, 10 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Aggarwal in view of Vanier.

The Examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Aggarwal in view of Zale.

ISSUES

Has Appellant shown that the Examiner erred in rejecting claims 15-18 and 20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter in that the claimed subject matter is neither (1) tied to a particular machine or apparatus, or (2) transforms a particular article into a different state or thing?

Has Appellant shown that the Examiner erred in rejecting claims 1-18 and 20-22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement?

Has Appellant shown that the Examiner erred in rejecting claims 1-14 under 35 U.S.C. 102(e) as being anticipated by Aggarwal because the content of data in the system of Aggarwal is different from Appellant's and thus distinguishes over the prior art systems which function in the same way but have different data content.

Has Appellant shown that the Examiner erred in rejecting claims 3, 10 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Aggarwal in view of Vanier on the grounds that a person with ordinary skill in the art would understand that because Vanier discloses a database which has adjusted index price values based on a jeweler's somewhat high appraisal derived from a jewelry market from which there are substantial discounts meets the claim limitation of *adjusting the indexed list price value based on a jeweler pricing adjustment for generating said baseline price estimate*.

Has Appellant shown that the Examiner erred in rejecting claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Aggarwal in view of Zale on the grounds that because Vanier adjusts the price estimate, e.g., the jeweler's appraisal, using national pricing standards and market values, the requirements of claim 20 are met.

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Obviousness

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See*

also *KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

Novelty/Obviousness Nonfunctional Descriptive Material

When “non-functional descriptive material” is recorded or stored in a memory or other medium (i.e., substrate) it is treated as analogous to printed matter cases where what is printed on a substrate bears no functional relationship to the substrate and is given no patentable weight. *See In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983).

Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

Patentable weight need not be given to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1582-83 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004). *See also Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005).

Patent Eligibility

The test to determine whether a claimed process recites patentable subject matter under § 101 is whether: (1) it is tied to a particular machine

or apparatus, or (2) it transforms a particular article into a different state or thing. *In re Bilski*, 545 F.3d 943, 961-62 (Fed. Cir. 2008) (en banc).

Written Description

The factual inquiry for determining whether a specification provides sufficient written description for the claimed invention is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991). An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997).

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Appellant's affidavit, dated July 24, 2003, introduces a ledger of payments made to Mr. Finkelstein which the Appellant asserts were for software development work done for Appellant's system. (Aff ¶ 7).
2. The ledger of payments exhibit lists only one entry prior to May 28, 1998 which is check entry #2212 in the amount of \$500.00.

3. The ledger of payments exhibit lists entries subsequent to check #2212 in excess of fifty payments to Mr. Finkelstein ending as late as January 14, 2000.

4. Appellant's affidavit, dated July 24, 2003, introduces a cover sheet from Ladas & Perry which states that a first draft copy of an application for an automated gemstone appraisal system and method for producing an automated gemstone report is enclosed. No copy, redacted or otherwise of the referenced draft application is provided with the Declaration.

5. The Examiner found that Aggarwal discloses laboratory grading data including cut type, weight, color, etc. (see col. 1, l. 62 to col. 2, l. 60 and col. 14, l. 16 to col. 16, l. 27). (Answer 4).

6. The Specification describes that the "system needs to be able to make an adjustment based on the particular lab generating the laboratory certificate for the gemstone." (Specification 11:30-33).

7. The Examiner found with respect to claim 17 that "Aggarwal does not teach adjusting price value based on jeweler pricing adjustment. Vanier teaches jewelers entering appraised value of gemstone appraised valued being stored in a database, the value being high from which there is a substantial discount." (Answer 6).

8. The Examiner concluded from (FF 7) that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to appraise the gemstone according to jeweler price, from which the gemstone

was purchased or sold, since different retail stores pay different price for the gemstones. (Answer 6-7).

9. The Examiner found with respect to claims 21 and 22 that:

Aggarwal does not teach the processing device adapted to adjust the pricing estimate based on a laboratory identifier or retail outlet identifiers. Vanier teaches the pricing of gemstone for insurance purpose. Vanier teaches user key in information with respect to the owner and the characteristics of the gemstone. Vanier teaches [an] insurance company using the database of appraised value and characteristics of the gemstone to reflect any increased value of the gemstones overtime, which provides valuable information to [the] insurance company.

(Answer 7).

10. The Examiner concluded from (FF 9) that:

Therefore it would have been obvious to one of ordinary [skill] in the art at the time of the invention to implement Vanier's appraisal method in Aggarwal's grading method for the intended use of providing valuable information to [an] insurance company in order to [provide] insurance coverage for the gemstone. It also would have been obvious to include different price estimate for each type of retailers based on the jewelry market, which is also based on the grading quality, in order to insure the gemstone appropriately, based on the price paid by buyer.

(Answer 7).

11. Vanier discloses an adjustment feature which recognizes a discount in an appraisal in that a:

[J]eweller goes through the necessary steps to capture the appropriate final optical image and key in the information with respect to the owner and the characteristics of the gemstone. The jeweller also enters his appraised value of the gemstone. This combined information is then downloaded via the modem to the national database and in particular, the appraisal data indicated as 9 in FIG. 3. The computer associated with the appraisal data 9 can compare the characteristics of the gemstone and the appraised value of the gemstone with industry standards or averages maintained by the database. The appraised value is normally accepted, however, if it departs significantly from industry standards or industry averages, the appraisal can be flagged. The most common case is that the appraised value may be somewhat high, as the jewelry market typically has a relatively high retail price from which there is a substantial discount.... This database of appraised values and characteristics of the gemstones can be used by the insurance company to reflect any increased value of the gemstones over time.

(col. 6, ll. 45-66).

12. The Examiner found that the claims fail the 35 U.S.C. § 112, first paragraph, written description requirement because:

Claim 1 recites, “an input device adapted to receive a gemstone laboratory grading certificate via a remote communication device[’]”
Applicant[’s] specification teaches gemstone data

received from a user, being typed by a user. Therefore the newly added feature is considered new matter. Applicant's specification also does not teach the input device receiving gemstone laboratory grading certificate. The specification teaches the input device receiving data contained on the various lab certificates associated with gemstone or which provides specific information about each gemstone. The specification does not teach receiving a certificate, thus this added feature is also a new matter.

(Answer 3).

13. The Specification discloses:

The remote communication system 20, allows the processing device 14 to remotely communicate with both the input device 12 and the output device 16. In the preferred embodiment the remote communication system 20 communicates over a shared public network, like the internet. In order for the devices to remotely communicate, the elements are connected to the remote communication system via communication access modules 22 and 24.

(Specification 6:22-30).

14. The Specification describes gemstone data as being synonymous with lab certificate information in that it states “the gemstone data received 102, corresponds to the data contained on the various lab certificates typically associated with each gemstone. The gemstone data the system preferably uses includes cut type, weight (carats), color, clarity, cut

proportions, fluorescence, and the identity of the lab generating the gemstone data. (Specification 9:8-13).

15. Vanier discloses using information with respect to the owner and the characteristics of the gemstone to fingerprint the stone and create a record of it. (Col. 5, ll. 14-23).

16. U.S. Patent Application Serial No. 09/455643, filed on 12/07/1999, now U.S. Patent No. 6,239,867 issued to Aggarwal claims priority from Provisional Application 60/068033, filed on 12/18/1997.

17. Provisional Application 60/068033 discloses a “data processor 215 for processing and storage; database and analytical software specifically designed for the gem grading system analyze these images and extract pertinent information from them to produce a appraisal report.” (Specification 9:12-15)

ANALYSIS

We affirm the rejections of claims 1-18 and 20-22 under 35 U.S.C. § 102 (e), 35 U.S.C. § 103(a) and 35 U.S.C. § 101.

A. 35 U.S.C. § 102(e) Arguments

Initially, we note that the Appellant argues claims 1, 2, 4-6, 8, 9, and 11-14 together as a group. Correspondingly, we select representative claim 1 to decide the appeal of these claims, with the remaining claims standing or falling with claim 1.

Appellant argues that “Aggarwal addresses the problem of producing

an objective measurement of a gemstone quality factor from the gemstone itself, whereas the claimed method and system produces an objective price estimate by adjusting existing subjective gemstone data.” (Appeal Br. 6).

We disagree with Appellant.

The Examiner found that Aggarwal discloses laboratory grading data including cut type, weight, color, etc. (FF 5). Appellant does not contest this finding with Aggarwal¹. (Appeal Br. 10). Rather, Appellant’s challenge is made to the context of the data being analyzed, namely that the data in Aggarwal is objective data, whereas that in Appellant’s system is subjective (Appeal Br. 5). However, a review of claim 1 reveals that on its face, this claim recites objective or empirical data associated with the grading certificate, namely, *cut type, weight, color, clarity, and cut proportions, wherein the data for cut proportions include an objective measurable value for at least one of depth percentage, table percentage, girdle thickness, crown height, crown angle, pavilion depth, pavilion angle, culet amount, and type of finish*. Moreover, the processing device of claim 1 makes no mention of a subjective analysis as argued by Appellant, instead this claim element only requires that the evaluation is “based at least upon the data included on the gemstone laboratory grading certificate”, which as found *supra*, is empirical data.

¹ Appellant contests the Aggarwal provisional application only to the extent of not disclosing computing a price estimate for use in an evaluation report based upon data on the gemstone laboratory grading certificate. (Appeal Br.10).

Second, Appellant attempts to distinguish over the prior art based on the content of the information which is being handled by the system. We decline to accept this distinction because it is based on nonfunctional descriptive material which cannot distinguish the invention from the prior art. *See In re Lowry*, 32 F.3d 1579, 1582-83 (Fed. Cir. 1994). Therefore, we are not persuaded by Appellant's arguments on this point.

B. 35 U.S.C. § 103(a) Arguments

Appellant asserts error in the rejection of claim 17 which recites in pertinent part, *adjusting the indexed list price value based on a jeweler pricing adjustment for generating said baseline price estimate*.

Claim 17 thus requires a jeweler pricing adjustment. The Examiner found that Vanier meets this limitation because the system of Vanier discounts a jeweler appraisal if it is too high (FF 11). We agree with the Examiner. We find that since Vanier discloses a database which has adjusted index price values based on a jeweler's somewhat high appraisal derived from a jewelry market which has relatively high retail prices from which there are substantial discounts, the required jeweler pricing adjustment is met. Appellant's arguments that claim 17 requires that the adjustment be "based on the identity of the jeweler" (Appeal Br. 7) "fail from the outset because . . . they are not based on limitations appearing in the claims . . .," and are not commensurate with the broader scope of claim 1 which merely recites *a jeweler pricing adjustment for generating said baseline price estimate*. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Article claims 21 and 22 recite in pertinent part *adjusting a price estimate based on a laboratory identifier from a gemstone laboratory grading certificate or a retail outlet identifier*.

The Examiner found that Vanier teaches using information with respect to the owner and the characteristics of the gemstone to fingerprint the stone (FF 15), and then adjusts the price of the gemstone based on this information. (FF 9,11).

Appellant however asserts:

At best, Vanier teaches consideration of the accuracy of an estimate of a gemstone based on a market rise in the value of a gemstone characteristic or type. However, this is different from teaching an adjustment and even if this disclosure did teach an adjustment (which Applicant submits that it does not) this adjustment is unrelated to a particular retail outlet or laboratory, and thus, still fails to anticipate pending claims 21-22.

(Appeal Br. 8).

We agree with the Examiner.

We find that Vanier similarly adjusts in its database the price estimate, e.g., the jeweler's appraisal, using national pricing standards and market values (FF 11) based on the record of the stone or its fingerprint. Thus, insofar as the system is concerned, Vanier similarly conducts an additional evaluation over that of the jeweler's to adjust for a flagged higher than normal appraisal.

Representative claim 3 recites in pertinent part *said pricing estimate*

includes a separate price estimate for each of a plurality of different types of retail outlets. Appellant argues that “Vanier also fails to teach using a gemstone laboratory grading certificate.” (Appeal Br. 9). Insofar as Appellant seeks a disclosure of a certificate in the prior art, we find, as our analysis above of claim 1 concluded, that Aggarwal discloses laboratory grading data including cut type, weight, color, etc. (FF 5). Such factors are similar, if not identical, to the fundamental elements of the certificate enumerated in claim 1, and thus this data collectively is read as a certificate (FF 14).

C. Non-provisional Reference Arguments

Appellant asserts that Aggarwal is not a reference based on the combined effects of two points: 1) that Aggarwal has been overcome by the submission of the Malenkoff Declaration which allegedly swears behind the effective filing date of May 28, 1998 of Aggarwal US 6,239,867; and 2) that the provisional application 60/068033 on which Aggarwal US 6,239,86 is based does not support the subject matter of the claims.

1. We are not persuaded by Appellant’s showing of facts in the Malenkoff Declaration to be sufficient in character and weight as to establish diligence from conception to reduction to practice prior to the effective date of the Aggarwal reference. Rather, we find that the evidence presented in the Exhibits appended to the Declaration, while it may be effective to establish conception, nevertheless fails to assert any facts of due diligence from the alleged time of conception date. Thus, it cannot support conception

of the invention prior to the effective date of the reference coupled with due diligence from a prior date to a subsequent reduction to practice or to the filing of the application.

The only entry which can be found in the exhibit appended to the Declaration prior to May 28, 1998 is one check entry #2212 which is for \$500.00, only a small fraction of the total amount which the ledger states was ultimately paid to the developer (FF 2). The subsequent entries number in excess of fifty payments to Mr. Finkelstein ending as late as January 14, 2000 (FF 3). While Appellant also submitted in the Affidavit a cover sheet with letterhead "Ladas & Perry" which states that a first draft copy of an application for an automated gemstone appraisal system and method for producing an automated gemstone report is enclosed (FF 4), we find no copy, redacted or otherwise, of such a draft application is provided with the Declaration (FF 4). Moreover, there is no evidence of reasonable diligence shown by establishing that the attorney worked reasonably hard on the application in question during the continuous critical period. *Bey v. Kollonitsch*, 806 F.2d 1024, 1027 (Fed. Cir. 1986).

2. Claim 1 recites a pricing estimate for use in an evaluation report, based at least upon the data included on the gemstone laboratory grading certificate. Appellant argues that:

While the Aggarwal provisional mentions the phrase "monetary value" and "aesthetic value" when discussing evaluation of gemstone qualities, the Aggarwal provisional only describes determining gemstone quality factors, such as

color, clarity, cut shape, brilliance, etc. Moreover, while these features may be related to the monetary value of a gemstone, the Aggarwal provisional fails to specifically disclose computing a price estimate.

(Appeal Br. 10).

We are not persuaded by Appellant's argument that because the provisional application of Aggarwal only establishes monetary values based on gemstone qualities, and Appellant's claimed pricing estimate is not met. This is because both terms represent value calibrated to currency based on particular qualities of the involved gemstone. Second, Aggarwal's provisional application 60/068033 discloses a system for producing an appraisal report. (FF 16, 17). We find that an appraisal inherently includes a valuation of property which meets the claim requirement. Thus, with respect to this claim element, we find that provisional application 60/068033 on which Aggarwal US 6,239,867 is based, does support the subject matter of the claims.

D. 35 U.S.C. 112, First Paragraph Rejection

The Examiner found that the Specification does not teach the input device receiving the data via a remote communication device. (FF 12). Appellant argues however that "Figure 2 and the corresponding specification at page 6, lines 15 - page 7, line 27 support receiving a gemstone laboratory grading certificate via a remote communication device." (Appeal Br. 11). We disagree with the Examiner. A review of the cited portions of the Specification show that the remote communication system 20 allows the

processing device 14 to remotely communicate with both the input device 12 and the output device 16 over a shared public network, like the internet (FF 13). We find that this disclosure conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession an input device as claimed, such as found with any Internet compatible device.

The Examiner also found that the Specification does not teach receiving a certificate (FF 12). We disagree with the Examiner. We find that the term “certificate” as used in the claims serves merely as a collective term defined within the claims as including cut type, weight, color, clarity, and cut proportions wherein the data for cut proportions include an objective measurable value for at least one of depth percentage, table percentage, girdle thickness, crown height, crown angle, pavilion depth, pavilion angle, culet amount, and type of finish. Since the Specification provides a basis for these items and ties them to what is comprised collectively in certificate information (FF 14), we therefore find error in the Examiner’s rejection of the claims based 35 U.S.C. § 112, first paragraph.

E. 35 U.S.C. § 101 rejection

The Examiner rejected claims 15-18 and 20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

The test to determine whether a claimed process recites patentable subject matter under § 101 is whether: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or

thing. *In re Bilski*, 545 F.3d 943, 961-62 (Fed. Cir. 2008) (en banc).

Prong 1: Machine or apparatus test:

The only mention in claim 15 of a machine is found in the preamble which recites in pertinent part, “A computerized method of producing a gemstone evaluation report, without the presence of the actual gemstone being required....” We find that while the word “computerized” is initially recited in the preamble, it is not thereafter fully incorporated into the body of the claim so as to breathe life and breath into it by setting forth the complete combination. *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989). Field of use recitations are typically found in the preamble of claims, and the weight given them largely depends on how the recitation is subsequently used in the body of the claim. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999). In other words, “if the preamble merely state[s] a purpose or intended use and the remainder of the claim completely defines the invention independent of the preamble,” it does not constitute a limitation. *Lipscomb’s Walker on Patents, 3rd Edition, Vol. 3*, § 11.11 at p. 361 (citing *Marston v. J.C. Penney Co.*, 353 F.2d 976, 986 (4th Cir. 1965)); *see also Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997). Thus, claim 15 and those claims depending therefrom fail the first prong of the *Bilski* test.

Prong 2: Transformation

Appellant argues that “the pending claims call for data that represents physical and tangible objects (gemstones) and the raw data is transformed

into a gemstone pricing estimate used on a gemstone evaluation report,” and thus satisfies the transformation test. (Reply Br. 4). We disagree with Appellant. In order for Appellant’s claims to pass muster with the transformation test, it is necessary to show that the claims involve the transformation of a physical object or substance, or electronic signal representative of any physical object or substance. *See Bilski*, 545 F.3d at 964. For this to happen, the claims would have had to physically alter the gemstone into a different state or thing, or a signal representing the characteristics of the stone would need to be altered. Neither occurs here because, as found *supra*, there is no system in which the signals can be altered nor can value, the item being manipulated, be considered a physical object—it is a concept.

Appellant also argues there is a significant post solution activity enumerated in the claims. However the closest Appellant comes to identifying such an activity is to assert that his data is gemstone specific and is not drawn only to a field of use qualifier. (Reply Br. 4). This argument fails to enumerate an action or activity, but rather focuses only on the content of the data being manipulated.

We thus affirm the rejection of claims 15-18 and 20 under 35 U.S.C. § 101.

CONCLUSIONS OF LAW

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 15-18 and 20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

We conclude the Appellant has shown that the Examiner erred in rejecting claims 1-18 and 20-22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 1-14 under 35 U.S.C. § 102(e) as being anticipated by Aggarwal.

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 3, 10 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Aggarwal in view of Vanier.

We conclude the Appellant has not shown that the Examiner erred in rejecting claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Aggarwal in view of Zale.

Appeal 2009-010063
Application 09/871,867

DECISION

The decision of the Examiner to reject claims 1-18 and 20-22 is

AFFIRMED

mls

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